

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
October 17, 2007

OPENING STATEMENT OF CHAIRMAN PATRICK LEAHY
HEARING ON THE NOMINATION OF MICHAEL B. MUKASEY
TO BE ATTORNEY GENERAL OF THE UNITED STATES
SENATE JUDICIARY COMMITTEE
OCTOBER 17, 2007

Early this year, as we began our consideration of the United States Attorney firing scandal, I observed that we faced the most serious threat to the effectiveness and professionalism of the United States Department of Justice since the days of the Saturday Night Massacre, when President Nixon forced the firing of special prosecutor Archibald Cox. I noted that unlike during Watergate, this time there was no Elliot Richardson or William Ruckelshaus around to defend the independence of federal prosecutors. Instead, high officials at the Department and their staffs were complicit with White House political operatives. Now, the entire senior leadership and their staffs have resigned, as have Karl Rove and his two top aides at the White House.

The crisis of leadership that led to these resignations has taken a heavy toll on the tradition of independence that had long guided the Department of Justice and protected it from political influence. The firing of the U.S. Attorneys, who are the chief federal law enforcement officers in their districts, sent a message to all U.S. Attorneys and the career prosecutors working in those offices that only "loyal Bushies" would keep their jobs or advance in their careers. This crisis has taken a heavy toll in morale at the Department and in confidence among the American people. As a former prosecutor I know that the dismay runs deep, from the career attorneys at Justice and in our U.S. Attorney offices, straight down to the cops on the beat.

I start this hearing as I did the hearing this Committee held on the last Attorney General nomination, hoping to be able to support the nominee. After that hearing in 2005, I decided that I could not vote for the confirmation of Alberto Gonzales. I did so noting, as Justice James Iredell had in 1792, that the person who serves as Attorney General "is not called Attorney General of the President, but Attorney General of the United States." There is good reason why the rule of law requires that we have an Attorney General and not merely a Secretary of the Department of Justice. This is a different kind of Cabinet position, distinct from all the others, and it requires greater independence. The departing Attorney General never understood this. Instead, he saw his role as a facilitator for this White House's overreaching policies and partisan politics.

Restoring the Department of Justice begins by restoring integrity and independence to the position of Attorney General of the United States. The Attorney General's duty is to uphold the Constitution and the rule of law -- not to work to circumvent it. Both the President and the Nation are best served by an Attorney General who gives sound advice and takes responsible action, without regard to political considerations -- not one who develops legalistic loopholes to serve the ends of a particular administration. The Attorney General cannot interpret our laws to mean whatever the current President wants them to mean. The Attorney General is supposed to represent all of the American people, not just one of them.

Regrettably, the former Attorney General enabled this Administration to continue policies that are in fundamental conflict with American values, decades of law, sound military practice, international law, and human rights. We see it demonstrated, yet again, in the recent revelation that even after waging and losing a public battle to resist congressional efforts to outlaw torture and honor our obligations, this Administration, enabled by the Justice

Department, apparently secretly doubled back to redefine "torture" and "cruel, inhuman and degrading treatment" to allow the very conduct Congress had outlawed.

We have seen departures from this country's honorable traditions, practices, and established law in connection with interrogation methods that we condemn when they are used by others. Likewise, we have seen political influence corrupt the Department of Justice when it has departed from its longstanding practices and tradition, practices that historically serve to insulate it from partisanship in law enforcement. This lawlessness led to Abu Ghraib, Haditha, and Blackwater. And valuing loyalty over competence and accountability led to the bumbling aftermath of Hurricane Katrina, the failure to care for wounded veterans at Walter Reed, and the purge among U.S. Attorneys.

There is much that has gone wrong that this Administration has stubbornly refused to admit or correct. When President Bush ascribed Attorney General Gonzales' resignation to supposed "unfair treatment" and having "his good name . . . dragged through the mud for political reasons," he mischaracterized the clear facts about a U.S. Attorney firing scandal that has decimated morale at the Department of Justice. To reclaim our moral leadership, we need to acknowledge wrongdoing. These hearings are about a nomination, but these hearings are also about accountability.

We need a new Attorney General. We need someone who understands that the responsibilities and duties of that office are not to act as a mouthpiece or validator for the Administration, or as the chief defense lawyer for the White House. We are reminded by the examples of Elliot Richardson and William French Smith from the Watergate era -- and more recently the examples of James Comey, Jack Goldsmith, and Alberto Mora -- that law enforcement officials must enforce the law without fear or favor to their benefactors at the White House or their political party. We have now seen what happens when the rule of law plays second fiddle to a President's policy agenda and the partisan desires of political operatives.

We are the most powerful Nation on earth, the most powerful Nation the world has ever known, a country that cherishes liberty and human rights, a Nation that has been a beacon of hope and freedom to the world. We face vicious enemies, and we need the confidence and the resolve to understand that we can and must defeat them without sacrificing our values and stooping to their level.

This is a job interview for a big job that has become even bigger. Along with helping keep Americans safe, protecting their rights, combating crime and enforcing the law, and managing more than 100,000 employees and a budget extending into the tens of billions of dollars, the next Attorney General must regain public trust and begin the process of repair and restoration.

This nomination can begin the repair process. I hope all Members of the Judiciary Committee, Democrats and Republicans alike, will join to restore the constitutional checks and balances that have been systematically eroded by this Administration, and I hope that we can begin that process this week. I welcome the nominee and urge him to answer our questions so that we can join together in restoring the Department of Justice to be worthy of its name. The American people expect - and deserve - no less.

#####